

Interview Summary

The Examiner and Applicants conducted a telephone interview on June 30, 2004 (Examiner Curtis E. Sherrer, Esq., Kamran Fattahi, Esq., and K. David Crockett, Esq.). Possible amendments to the claims were discussed, including amendments to the claims to specify preservative alcoholic content of the sake, specification of specific produce added, and addition of preservative in addition to the preservative aspects of the alcohol, fruit acids, and pasteurization. Various factors supporting patentability were also discussed. No agreement was reached.

Remarks

Claims 1 through 3, 5 through 12, and 14 through 16 remain pending in the application.

Claims 1 through 16 are rejected as obvious over Matsuura, et al. in view of Nagao, et al., under the assertion that together Matsuura teaches the addition of fruits to sake, that Nagao teaches the addition of fruit juice to sake and the pasteurization of sake, and that the addition of preservatives would be obvious due to the well-known use of preservatives in food.

The claims have been amended to clarify the departure from the prior art more explicit. The amendments address concerns expressed by the Examiner regarding the inherent content of preservative acids in fruit (ascorbic acid and citric acid) by requiring the addition of preservative in addition to any acid found in the fruit (this is clearly supported in the specification), and, together with the state of the art, provide substantial basis for non-obviousness.

First, as previously pointed by both the Examiner and the Applicants, the claimed combinations have not be obtained in the prior art, despite centuries of development in the sake art. That a purportedly obvious combination would go

unnoticed for centuries while the component parts are readily apparent and available for combination clearly indicates that the combination is not obvious. That the art of sake brewing is centuries old is beyond dispute. The fact that spoilage is an ancient problem is also beyond dispute. The Applicant's prior argument that failure to make the combination indicates non-obviousness is compelling, notwithstanding the apparent simplicity of the combination.

Second, there is a clearly established cultural aversion to making the combination. In fact, as stated in the McNulty article (attached as Exhibit A), it is illegal in Japan to add preservatives to sake:

According to Japanese law it is illegal to artificially flavor or preservatives to sake. It's illegal to add any artificial preservatives to sake, although their use in wine is permitted in many countries.

Sake is universally touted for its all natural quality, as in the statement of Gekkeikan Sake (USA) web page (attached as Exhibit B) which states:

Sake is made from the simple ingredients of rice and water. Containing no artificial additives, enhancers or sulfites, Gekkeikan sake is completely natural.

The preservative-free quality is repeated on numerous informational web pages, represented by the information page provided by SakeUSA, attached as Exhibit C, which clearly states that, unlike wine, sake has not sulfites or preservatives. The literature regarding sake establishes a clear tradition forbidding addition of preservative to sake and clear cultural aversion preservatives. This is quite sensible, given that preservative are unnecessary in a beverage that is intended to be consumed fresh (unlike wines, which must be aged).

Next, the addition of preservatives should be perceived as unnecessarily redundant, to the point where there is utterly no motivation to add them to sake. The alcohol content of sake is quite high, and this is reflected in the claims. The high alcohol content is a notorious preservative, and it is well known that lower

alcohol content wines might require the addition of highly undesirable sulfites. As pointed out by the Examiner, fruits inherently contain preservatives such as ascorbic acid or citric acid, which are known preservatives. Pasteurization is also a well-known preservative method. Thus, prior to reciting the addition of preservatives, the claims already call for three distinct preservative steps or components, clearly negating any motivation to add yet another preservative. (Also, the claims have been amended to avoid the interpretation that addition of the fruit, without further addition of preservative, would meet the claims.)

Thus, Applicants have presented substantial evidence that the claimed combination is non-obvious because (1) it has been possible for centuries but never done, (2) the art of sake brewing explicitly teaches against it and (3) given that three preservative acts are performed under the combination of Matsuura and Nagao, there is no apparent motivation to provide the fourth preservative step recited in the claims. All of these factors support a determination that the claims, as amended, are non-obvious.

Conclusion

This response has addressed all of the Examiner's grounds for rejection. The rejections based on prior art have been traversed. Reconsideration of the rejections and allowance of the claims is requested.

Respectfully submitted,

Law Offices of Kamran Fattahi
(A Professional Law Corporation)

Kamran Fattahi Jul 6, 2004

Kamran Fattahi, Esq.
Registration No. 35,758
Law Offices of Kamran Fattahi
6345 Balboa Blvd.
Building 2, Suite 330
Encino, CA 91316
818-996-0015 (Tel)
818-996-0095 (Fax)

Exhibit A

SAKE - John McNulty

It's not wine...it's not even rice wine....it's not a spirit though it has strong flavors and it's not beer even though it is brewed. So just what is Sake?

Sake, a naturally fermented alcoholic beverage is classified in the same general category with wine and beer. However, these beverages are made through a fermentation process which, essentially is the conversion of glucose into alcohol through the work of yeast enzymes. Due to the differences in ingredients, the corresponding fermentation processes required for producing each product vary in degree of complexity. Sake's uniqueness starts centuries ago with its ingredients.

History

The Japanese began producing sake sometime after the introduction of wet rice cultivation in the third century B.C. The first written record of sake being drunk in Japan dates from about 300 A.D. In ancient Japan, sake production was confined primarily to the Imperial court and to large temples and shrines. That's why sake is often associated with religious rituals and festivals. Even today, sake is always served at traditional ceremonies in Japan.

The Japanese have held sake in extremely high regard since ancient times. They artfully crafted and decorated china or wooden containers and cups used to serve sake suggest the high value the Japanese place on this special beverage.

The ingredients Sake is made primarily from rice and water interacting with microbes known as koji and sake yeast. More precisely, only highly polished rice is used. The use of highly polished rice has a significant effect on the quality of the sake. Japanese rice can be roughly classified into two varieties. The first, the ordinary table rice commonly used for eating, encompasses a number of sub-varieties, depending on the manner of cultivation and the region in which it is grown. The second variety, Sakamai, is used exclusively for sake production. Ordinary table rice can also be used to make sake, but, in general, sake made from Sakamai has a higher reputation for quality. Sakamai not only features larger, softer grains than ordinary table rice, but it's also more expensive, since it grows only in certain areas and requires more complex cultivation techniques.

Water quality is extremely important, because the mineral content of the water affects the taste of sake. Semi-hard water is most suitable for sake production due to its lower iron and manganese content. Japan has a large amount of precipitation (approximately 1,500 mm/year) and ample high-quality ground water throughout the country. As a result, excellent sake can be produced in nearly every region.

Making Sake

The fermentation process for sake is unique in the fact that the conversion of starch into glucose and glucose into alcohol occur at the same time in the same location. Brewed from rice, koji (molted rice), is added to convert the starch present in rice into glucose needed for fermentation. In this aspect, the actual procedure for brewing sake is relatively complicated. The brewing process is more complex than that employed for beer. In the wine production, the crushed grapes ferment naturally after yeast is added. In the case of beer, fermentation takes place after yeast and hot water are added to the malt. But the rice used to make sake does not begin to ferment with the addition of yeast alone. Sake brewing begins with the introduction of koji, which breaks down rice starch into glucose in a process known as "saccharification." Next, sake yeast is added and fermentation begins. This process, in which saccharification and fermentation take place in the same vat at the same time, is called "multiple parallel fermentation." This is a unique feature of sake brewing that distinguishes it from every other brewing process. Koji are actually microbes, similar to those used in blue cheese production, that are good for the health. Shouyu(soy sauce) and miso(soy bean paste) are also produced using similar beneficial microbes.

The Flavors of Sake The longer fermentation process -which can be as much as three to four times that of wine- produces a wide variety of amino acids, giving sake a balanced, rounded taste and fresh flavor. Japanese Sake can be classified into the following four varieties in terms of taste and aroma.

Exhibit A

Kunshu(Green label)Flavorful sake Sake with a fruity, flowery aroma and low acidity
Sohshu(Blue label) Light,smooth sake Sake with a fresh taste, moderate acidity and dry aftertaste
Junshu(Gold Label) Rich sake Sake with a light mild flavor and rich, smooth taste
Jukushu(OrangeLabel) Aged sake Sake with a light golden color, a spicy, nutty taste and a flavor reminiscent of sherry.

The alcohol content of sake normally ranges from 14 to 15%. A new type of sake with a lower alcohol content in the 8-10% range has also been developed recently in response to the growing preference among consumers for "lighter" sake.

Ginjo-shu has a fruity aroma, even though it's made from rice because the special yeast employed in Ginjo-shu production happens to produce a fruity aroma during the fermentation process. According to Japanese law it is illegal to artificially flavor or preservatives to sake. It's illegal to add any artificial preservatives to sake, although their use in wine is permitted in many countries. Instead of using preservatives, sake makers pasteurize their sake twice at 60-65 C (140-149 F), a process referred to as "low temperature pasteurization," and then seal it hermetically during bottling.

Controlling the complex sake-brewing process requires intuition as well as knowledge of special techniques. For this reason, every sake maker has its own brewery master known as a toji. The toji manages not only the sake-brewing process but also the activities of his brewing team, including their work shifts and living arrangements. Maintaining a good team spirit is essential to sake brewing. The toji lives at the work site as long as he is in control of the brewing process. When he grows old, he appoints a hand-picked successor, to whom he has passed down his brewing know-how and techniques.

Since sake is an extremely delicate alcoholic beverage that is especially sensitive to heat and light, it must be stored in a cool, dark place. Refrigeration is recommended. Exposing sake to sunlight can change its taste as well as its color. Exposure to air can reduce the quality of sake over time. This means that once you have opened a bottle, it's best to finish it fairly soon

Hot or Cold... A Question of taste or quality?

You can drink Sake hot or cold. It's also perfectly acceptable to drink it at room temperature.

The taste and flavor of sake change, depending on the temperature. You can select the temperature of the sake you drink depending on the season or the type of food you're eating.

As compared with beer and wine, sake is drunk at a much wider range of temperatures, extending from approximately 5 to 55 C(41-131 F). It should not be heated above 60 C (140 F). The ideal temperature range for sake also varies depending on the type of sake in question. Flavorful sake and light, smooth sake taste better served chilled, for example. Most of the better sakes are however, not heated before serving as the heat process strips away some of the more delicate aspects of aroma and brings forth the harshness of the alcohol.

Sake only with Sushi or Japanese Cuisine?

While it is the beverage of choice for Japanese food and especially Sushi and Sashimi, Sake's vast range of styles and flavors result in a beverage like wine, that can match any meal. Kunshu or Green label sake is a suggested aperitif Sake going well with lighter dishes like seafood salads and mousses as well as steamed vegetable and terrines Sohshu or Blue Label is a light and smooth sake that goes well with Pasta in red sauce,

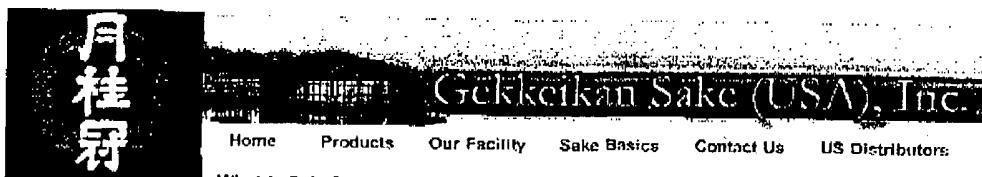
Exhibit A

omelets, smoked fish, tempura and/or deep fried shrimp and oysters. Also goes well with crabcakes.

Junshu or the God Label sake is rich and full flavored and would go well with dishes with cheese like Pasta Alfredo. Hamburgers, spare ribs and heavier fish like grilled or sauteed Tuna and Salmon work with this sake as well.

Jukushu or Orange Label Sake is aged and like older wines it goes with more complex dishes that have fuller flavors. Pate de Foie Gras, truffles, mushrooms, roast beef, heavy stews and many of this heartier fare goes very well with this sake.

Sake just another beverage that can bring us pleasure...so we can eat well, drink better! see you on 1540 AM on Saturdays 3-5, at a wine and spirits class near you or at Corkscrewed of Cherry Hill where you can find sake as well as wine and spirits And soon, a full Japanese restaurant, Kyoto, run by Sushi master Young Kim who has been thrilling me and other sushi lovers for the past year at The Village Walk shopping center.



What is Sake?

Sake is a naturally fermented alcoholic beverage classified in the same general category with wine and beer. These beverages are made through a fermentation process which, essentially is the conversion of glucose into alcohol through the work of koji (fungi) enzyme and yeast. However, due to the differences in ingredients, the corresponding fermentation processes required for producing each product vary in degree of complexity.

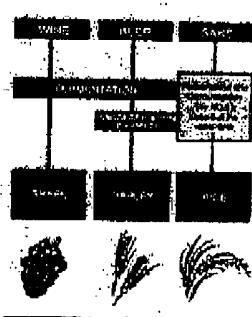
Sake is made from the simple ingredients of rice and water. Containing no artificial additives, enhancers or sulfites, Gekkeikan sake is completely natural. It is a great way to add unique flavor to your favorite dishes. It is perfect for use in stir-fries, marinades, sauces and a variety of other recipes. Like beer and wine, sake is lower in both alcoholic content and calories when compared to distilled liquors. But unlike wine and distilled liquors, freshness is the key to good taste. With production taking place in our California brewery year round, Gekkeikan is able to consistently deliver fresh, high quality sake.

Caloric Information

Sake: 105 ~ 110 cal.
Beer: 40 ~ 70 cal.
Wine: 80 ~ 100 cal.
Whiskey: 225 ~ 250 cal.
For 100 ml (3.3 oz.) serving

Nutritional Information

Protein: 0.5 g
Fat: less than 0.1 g
Sugar: 5 g
Dietary Fiber: less than 0.1 g
Calcium: 1.6 mg
Iron: less than 0.1 mg
Potassium: 2.9 mg
Magnesium: 0.9 mg
Vitamin B1: 3.0 µg
For 100 ml (3.3 oz.) serving



The Japanese often serve sake at a temperature to match the time of year or the style of food it will accompany. This custom is so widespread that the Japanese language itself includes special words for sake depending upon the temperature at which it is served. Warmed or slightly heated sake is called kan. When kan is served at 45°C (113°F), its fullness of body and mellow flavor become more pronounced making this a popular choice during the cooler months or when paired with refreshingly light fare. Enjoyed in this fashion, kan is particularly soothing.

Chilled sake is called hyo. Hyo generally assumes a fresh, fruity character and is particularly refreshing during warm weather, but can be equally enjoyable throughout the year. Some sakes are brewed specifically to be served chilled, such as many of the premium sakes. This is in order to preserve the subtle, delicate flavor that warming can destroy. Other sakes are brewed to be more versatile and tend to have a slightly heartier flavor that is enjoyable both chilled and warmed.

Traditional Japanese culture makes frequent use of sake as a way to observe a seasonal holiday or mark a special event. As such, sake is imbibed on such occasions as toasting the New Year, celebrating a local festival or solemnizing a wedding vow. Whether served in an antique porcelain cup or a small wooden cup (masu), whether spiced with herbs or garnished with flower petals, sake plays a special role in ceremonial aesthetics.

Today sake is most often enjoyed according to personal preference in casual atmospheres. Individuals may select the season, occasion, food, and surroundings that suit their own tastes.



Gekkeikan Sake (USA), Inc.
1136 Sibley St., Folsom CA 95630
Telephone: (916) 995-3111
Fax: (916) 995-2221

Copyright© 2002 Gekkeikan Sake (USA), Inc.
All Rights Reserved

Exhibit B

Exhibit A Health & Trend

Health Benefits Of Sake

- Unlike wine, saké has no sulfites!
- Saké has no additives or preservatives!
- Saké has half the acidity of wine!
- Saké naturally enhances lightly prepared cuisine such as seafood chicken.
- You know good sake the next morning.



In the United States, Japanese food and now Fusion cuisine, has become a popular with many Americans because of its exquisite presentation of healthy ingredients. Saké consumption in the US has increased dramatically because it too, is a natural and healthy alcoholic beverage. Unlike wine, saké has no sulfites or preservatives. Premium saké, where the rice kernel has been milled down to less than 65%, is reputed to be hangover free. SAA believes that sake consumption will continue to increase as more Americans become aware of the health benefits of enjoying saké.

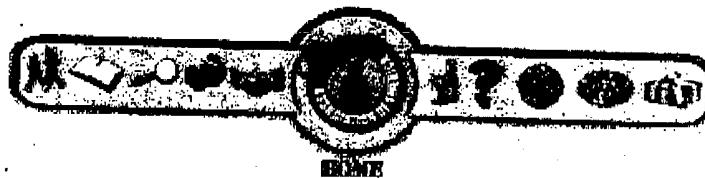


Exhibit C

<http://www.sakeusa.com/sake/health/health.html>